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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION 4

THE PEOPLE,

Plaintiff and Respondent,

v.

PHILLIP DAVID GRANADO,

Defendant and Appellant.

A141905

(City & County of San Francisco  
Super. Ct. Nos. SCN221496, 13031076,  
& 14003023)

Defendant and appellant Phillip David Granado appeals from a trial court order imposing a restitution fine of \$750 under Penal Code<sup>1</sup> section 1202.4, subdivision (b), together with a stayed, matching parole revocation fine (§ 1202.45). Granado's sole contention on appeal is that the imposition of these fines violates ex post facto principles of both state and federal constitutions and must be reduced to \$700 in accordance with the statutory minimums existing at the time of the underlying offenses. We affirm the judgment.

**I. BACKGROUND**

The underlying acts of domestic violence and criminal threats occurred between February and October 2013. Given Granado's appellate contentions, a detailed recitation of the underlying facts is unnecessary.

On March 24, 2014, a jury found Granado guilty on one count of criminal threat (§ 422) and three counts of domestic violence battery (§ 243, subd. (e)(1).) On April 18,

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<sup>1</sup> All further undesignated statutory references are to the Penal Code.

2014, Granado was sentenced to a three-year term in state prison for the criminal threat. Additionally, Granado was sentenced to three one-year jail terms on the three counts of domestic violence battery that are to run consecutive to the prison term, but concurrent to each other. The court imposed a \$750 fine pursuant to section 1202.4, subdivision (b)(1), comprised of \$300 for the felony count and \$150 for each of the three misdemeanor counts. The court also imposed an additional, stayed parole revocation fine of \$750 under section 1202.45.

## II. DISCUSSION

Section 1202.4, subdivision (b), states: “(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. (1) The restitution fine *shall be set at the discretion of the court* and commensurate with the seriousness of the offense. If the person is convicted of a felony, the fine *shall not be less than two hundred forty dollars* (\$240) starting on January 1, 2012, two hundred eighty dollars (\$280) starting on January 1, 2013, and three hundred dollars (\$300) starting on January 1, 2014, and *not more than ten thousand dollars* (\$10,000). If the person is convicted of a misdemeanor, the fine *shall not be less than one hundred twenty dollars* (\$120) starting on January 1, 2012, one hundred forty dollars (\$140) starting on January 1, 2013, and one hundred fifty dollars (\$150) starting on January 1, 2014, and *not more than one thousand dollars* (\$1,000).” (§ 1202.4, subd. (b)(1), italics added.)

Appellant argues that ex post facto principles require that the \$300 restitution and parole revocation fines for the felony conviction must be reduced to \$280, the statutory minimum at the time he committed the crimes. He also contends that the three \$150 fines for the misdemeanor convictions must each be similarly reduced to \$140, to reflect the statutory minimum in 2013.

Granado has forfeited his right to object to the amount of the restitution and parole revocation fines by failing to do so at sentencing. (*People v. Gibson* (1994) 27 Cal.App.4th 1466, 1468-1469.) Granado insists that he did not forfeit his right to raise

this issue in the trial court “because the ex post facto violation resulted in an unauthorized sentence.” An exception to the forfeiture doctrine does exist for the “ ‘unauthorized sentence’ ”—those that “could not lawfully be imposed under any circumstance in the particular case.” (*People v. Scott* (1994) 9 Cal.4th 331, 354.) However, as we shall explain, this exception has no application here.

Granado’s claim of error is unfounded. As respondent correctly notes, section 1202.4, subdivision (b)(1) provides *a range* of a restitution fine not less than \$280 and not more than \$10,000 during the 2013 calendar year for felony convictions. Similarly, the statute states the range of a restitution fine to be not less than \$140 and not more than \$1,000 for misdemeanor convictions occurring in 2013. As such, respondent argues that the fine Granado received was within the range permitted by the statute.

We agree with respondent’s position. There is no evidence supporting appellant’s contention that the trial court intended to impose the minimum fine. Granado received a restitution fine slightly higher than both the minimum fine of \$280 for a felony and the minimum fine of \$140 for each misdemeanor during the 2013 calendar year. The statute authorized this decision because it was within the applicable range set by the Legislature and the amount of the fines imposed were “at the discretion of the court.” (§ 1202.4, subd. (b)(1).) Therefore, the restitution and parole revocation fines do not violate the ex post facto doctrine because Granado had fair notice of the possible punishment for the crime. (*In re Vicks* (2013) 56 Cal.4th 274, 287.)

Appellant next claims that the court erred in failing to specify how it reached the total dollar amount for the restitution fine. Section 1202.4, subdivision (d), provides that “[e]xpress findings by the court as to the factors bearing on the amount of the fine shall not be required.” (§ 1202.4, subd. (d).) Thus, under the plain language of the statute, the trial court was not required to explain how it arrived at the aggregate dollar amount. Rather, section 1202.4, subdivision (b) states that the court must explain why it arrived at its decision *only* when it “finds compelling and extraordinary reasons for *not* [imposing a separate and additional restitution fine] and states those reasons on the record.”

(§ 1202.4, subd. (b), italics added.) Here, appellant incorrectly argues that the court must explain how it arrived at its decision in the reverse situation.

In sum, the \$750 fine cannot be characterized as unauthorized because section 1202.4, subdivision (b) authorized a restitution fine of up to \$10,000 at the time Granado committed his crimes. Thus, the exception to the forfeiture doctrine regarding the “ ‘unauthorized sentence’ ” does not apply; Granado forfeited the issue. (*People v. Hiscox* (2006) 136 Cal.App.4th 253, 258.)

### **III. DISPOSITION**

We affirm the order of the trial court imposing a restitution fine for a total of \$750 under section 1202.4, subdivision (b)(1) and the additional parole revocation restitution fine of \$750 under section 1202.45.

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REARDON, ACTING P. J.

We concur:

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RIVERA, J.

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STREETER, J.